

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION I

CACR06-793

MARCH 7, 2007

ERIC BROWN

APPELLANT

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT  
[NO. CR-05-363-5]

V.

HON. ROBERT H. WYATT, JR.,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Eric Brown was convicted by a jury of aggravated robbery and sexual assault in the second degree and sentenced to ten years' imprisonment on the aggravated-robbery conviction and five years' imprisonment on the sexual-assault conviction to run concurrently. His sole point on appeal is that the circuit court erred in denying his motion for directed verdict because there was insufficient evidence to corroborate the testimony of his accomplice, Brandon Pugh. The State responds, arguing that appellant failed to challenge the sufficiency of the accomplice-corroboration evidence in his motion for directed verdict at trial and therefore his argument is precluded from appellate review. We agree and affirm.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Price v. State*, 365 Ark. 25, \_\_\_ S.W.3d \_\_\_ (2006). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

Pursuant to Arkansas Code Annotated section 16-89-111(e)(1)(A) (Supp. 2005), a person cannot be convicted of a felony “upon the testimony of an accomplice . . . unless [that testimony is] corroborated by other evidence tending to connect the defendant . . . with the commission of the offense.” The corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. Ark. Code Ann. § 16-89-111(e)(1)(B) (Supp. 2005). Appellant challenges the sufficiency of the evidence on the basis that there was insufficient corroboration of accomplice testimony to support his conviction.

Rule 33.1(a) of the Arkansas Rules of Criminal Procedures provides that a “motion for directed verdict shall state the specific grounds therefor.” The supreme court has clarified that this requirement extends to any challenge to the sufficiency of the evidence corroborating an accomplice’s testimony and that “the failure to challenge the sufficiency of accomplice-corroboration evidence in a directed-verdict motion at trial precludes appellate review on that ground.” *Tillman v. State*, 364 Ark. 143, \_\_\_, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2005)

(citing *Hutts v. State*, 342 Ark. 278, 28 S.W.3d 265 (2000)). Parties are bound by the scope and nature of the objections and arguments made at trial. *Id.*

In this case, appellant's attorney made the following motion on appellant's behalf at the close of the State's case:

MR. HALL [Appellant's attorney]: I would move for a directed verdict on the insufficiency of the evidence as the crime is charged. It listed in the aggravated robbery count [names of alleged victims]. It's charged conjunctively. And I don't believe that there's been any evidence produced that either of the two sons were robbed and I think that that is failed to those charges.

[State's attorney responded.]

MR. HALL: Judge, I believe the state – what the law is they have to prove each element of the crime and I believe by their – the way that they drew up the information they embrace those elements and I believe they are proven fatal. That's part a of my motions.

THE COURT: We still on aggravated robbery.

MR. HALL: Yes. And I have a part b to that too.

THE COURT: All right. Go on to part b.

MR. HALL: Part b is that there's – there was evidence that these guys had a gun. But there's not one scintilla of evidence about threaten to employ or employed. It was just that he had it, you know.

[Discussion between attorneys and court about the gun. Court denied motion for directed verdict with regard to the aggravated-robbery charge.]

MR. HALL: On attempted rape, I don't believe that there's been enough – that there has been any proof that a substantial step was taken by this – we don't know who did what.

[The court denied the motion for directed verdict with regard to attempted rape.]

After the defense rested, appellant's attorney renewed his motions for directed verdict by stating:

Again, based on the insufficiency of the evidence with respect to the aggravated robbery charge. Again, I would make the motions specifically the way they were charged in the information, the multiple defendants (sic), and I would say there was no evidence with respect to the aggravated robbery of each and every defendant (sic), that would be part a. Part b would be – excuse me, victim. Not defendant, victim. And with part b, I would say that they didn't – nobody every (sic) threatened to employ deadly physical force and subpart c would be that there was no testimony that it was a deadly weapon with respect to the aggravated robbery.

With respect to the attempted rape charge, I would say that there was no evidence of a substantial step intended to culminate in the course of committing a rape.

Nowhere in his argument did appellant's attorney specifically challenge the State's evidence corroborating his accomplice Brandon Pugh's testimony. We hold that his failure to challenge specifically the sufficiency of accomplice-corroboration evidence in his motion for directed verdict precludes appellate review on that ground. *See, e.g., Tillman, supra; Hutts, supra* (holding the argument that the State failed to demonstrate appellant "aided or abetted" the murder not sufficiently specific to challenge sufficiency of accomplice-corroboration evidence).

Affirmed.

PITTMAN, C.J., and HART, J., agree.